IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.29 OF 2003

The State of Maharashtra, Appellant.
Vs
Vijay Vitthal Kadam & ors. Respondents.

Mrs M.H.Mhatre, APP for the appellant.
Ms Revati M.Dere, for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 24th JULY, 2006

P.C.:

1. Heard Mrs Mhatre, learned A.P.P for the appellant and Ms Revati Dere, learned counsel for the respondents.

2. This appeal is directed against the judgment and order dated 27.6.2002 passed by the learned Addl.Sessions Judge, Pune in Criminal Appeal No.143 of 2001, by which the judgment and order of conviction under sections 325 and 323 of IPC rendered by the trial Court has been quashed and set aside. The respondent-accused were charged and tried under sections 325, 323, 506 r/w 34 of IPC on the allegations that on 2.10.1998 at about 5.30 pm the alleged incident of scuffle occurred in which respondent no.1-accused no.1 caused grievous hurt to the complainant. The appeal court, while acquitting the accused, had taken into account the failure on the

part of the prosecution to examine the eye-witness as also the suggestion made during the cross-examination that the fracture to the wrist was caused due to fall from a tractor, as also the delay caused in lodging the FIR, and keeping that in view the appeal came to be allowed by the learned Sessions Judge. I perused the judgments of the appeal court as also of the trial Court. The alleged incident occurred on 2.10.1998 at 5.30 pm. The F.I.R., however, came to be lodged on 4/10/1998, sometime between 2 and 4 pm. It also appears from the material on record that though an eye-witness was available the prosecution made no efforts to examine him in support of the case against the respondents-accused. Keeping that in view and considering the reasons recorded by the Courts below on appreciation of the evidence on record, the judgment impugned in the present appeal cannot be termed as unreasonable and perverse. The view taken by the court below is reasonably possible view. Merely because other view, as tried to be contended by the learned APP, is possible, that by itself would not be sufficient to convert the judgment of acquittal into conviction. In the circumstances, this appeal is dismissed.

(D.B.BHOSALE,J.)